

Before the  
Administrative Hearing Commission  
State of Missouri



DIRECTOR OF INSURANCE,

Petitioner,

vs.

LEROY LOVE, SR.

Respondent.

No. 06-0731 DI

**DECISION**

The Director of Insurance ("the Director") has cause to discipline Leroy Love, Sr., for committing forgery, fraud, and misappropriation of funds, using fraudulent and dishonest practices in his business, and demonstrating untrustworthiness and incompetence.

**Procedure**

The Director filed a complaint on May 22, 2006. We served Love with our notice of complaint/notice of hearing and a copy of the complaint by certified mail on June 1, 2006. We held our hearing on October 2, 2006. Legal Counsel Kevin Hall represented the Director. Neither Love nor any representative for him appeared. Our reporter filed the transcript on October 6, 2006.

### Findings of Fact

1. The Director issued an insurance agent license, now called an insurance producer license,<sup>1</sup> to Love on September 25, 1978. Love remained licensed until he cancelled his license on August 21, 2006.

2. In 2002, Love sold a residence that he owned at 8831 Blewett Drive, Jennings, Missouri, to Shari Hamilton and Marcus Merritt. Love agreed to pay closing costs and the first annual premium of \$348 on the fire insurance policy with Missouri Property Insurance Placement Facility ("MPIPF"). Love sent in the first premium installment of \$143 (\$140 premium installment and \$3 handling fee) on the residence's fire insurance policy. MPIPF received it on May 29, 2002.

3. Homecomings Financial Network, Inc. ("Homecomings Financial") was the mortgagee for the buyers. Homecomings Financial made a second premium payment of \$348 to MPIPF. The second installment was supposed to be only \$211 (\$208 premium installment and \$3 handling fee). The payment of \$348 left an "excess amount due" of \$137.<sup>2</sup>

4. MPIPF issued a check, dated June 18, 2002, for \$137 made payable to Homecomings Financial at its address ("2002 refund check"). MPIPF mailed the 2002 refund check to Love to deliver to Homecomings Financial.

5. Love typed on the face of the 2002 refund check just above the payee's name, "Leroy Love Sr Agent for." Love endorsed the check:

Homecomings Financial  
Leroy Love Agent for Homecomings.

6. Love negotiated the 2002 refund check at a bank on July 15, 2002.

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<sup>1</sup>Section 375.014.4, RSMo Supp. 2005, converted insurance agent licenses to insurance producer licenses, effective January 1, 2003. L. 2001, SB 193 (91st Gen. Assem., 1st Reg. Sess.), §§ A, 375.014, and B.

<sup>2</sup>Ex. 8.

7. Love was not an agent for Homecomings Financial. Love had no authority to alter or endorse the 2002 refund check.

8. Love owned a residence at 706 Brotherton, Ferguson, Missouri. In November 2003, he sold the residence to Cachet Law. Love, acting as agent for Law, obtained fire insurance on the property for 2004 from MPIPF. Law knew of and either approved or acquiesced in Love's action. Pursuant to the real estate sales agreement, Love paid the closing costs and the annual fire insurance premium. Homecomings Financial was the mortgagee.

9. When it came time to obtain property insurance for 2005, Law obtained homeowner's insurance from State Farm. The premium for the State Farm insurance was paid out of Law's escrow account at Homecomings Financial.

10. Love arranged to have fire insurance for Law's property through MPIPF ("the 2005 MPIPF policy") and liability insurance through National Lloyds Insurance Company ("the 2005 National policy"). Law never authorized Love to obtain insurance coverage for 2005 and was unaware that Love did this.

11. Homecomings Financial received a billing notice from National, dated December 14, 2004, for the 2005 National policy. The billing notice was for the annual premium of \$1,023. Homecomings Financial paid the annual premium out of Law's escrow.

12. On December 16, 2004, Homecomings Financial paid the renewal premium of \$360 out of Law's escrow for the 2005 MPIPF policy.

13. After MPIPF received the check for the renewal premium, it sent the 2005 MPIPF policy's declarations page to Love on December 17, 2004, with a request that Law submit an application for another year of insurance under the FAIR Plan.

14. After Love received the declarations page from MPIPF, he wrote on it, "Cancel Flat Found Better coverage with liability C. Law."<sup>3</sup> Love did not tell Law about this. Law never authorized Love to take this action or to sign her name.

15. Love sent the declarations page ("the MPIPF cancellation") back to MPIPF. MPIPF received it on December 20, 2004.

16. On January 3, 2005, MPIPF issued a check payable to "Cachet Law" for \$360 as a refund of the renewal payment ("the 2005 refund check"). MPIPF sent the check to Love.

17. Love endorsed the 2005 refund check by signing "Cachet Law" and "Leroy Love Sr." Love negotiated the check on January 11, 2005. Law did not authorize Love to endorse her signature or to cash the check. Love did not send the money from the check to Law.

18. Law first learned of the transactions with MPIPF and National when Homecomings Financial notified her that it was raising her monthly payment. Her escrow did not cover the amounts for premiums from MPIPF, National, and State Farm.

19. On May 5, 2005, Law filed a complaint with the Director about Love's conduct.

20. Love responded to Law's complaint by an undated letter addressed to Special Investigator Jennifer Crum.<sup>4</sup> The Director received Love's letter on June 3, 2005. The letter states:

Miss Law's policy was written with the Mo Fair Plan which does not offer liability coverage, therefore it was renewed with National Lloyds which does. Her refund was credited to her new policy. On April 20, 2005, she informed me in writing, that she was with State FaRM [sic] and wanted a total refund[.] Miss Law has been paid both refunds as she has stated in her complaint. Miss Law also purchased this property from me. And I paid \$2774.00 of her closing cost.

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<sup>3</sup>Ex. 3.

<sup>4</sup>Ex. 5.

21. On February 22, 2006, the Director's senior counsel and special investigator interviewed Love regarding Law's complaint against Love.

22. On April 4, 2006, the Director's special investigator interviewed Law regarding her complaint against Love.

### **Conclusions of Law**

We have jurisdiction to hear the Director's complaint.<sup>5</sup> The Director has the burden of proving that Love has committed an act for which the law allows discipline.<sup>6</sup>

#### Count I – Signing the Name of Another Without Authorization

The Director proved that Love signed Law's name to the MPIPF cancellation without authorization from Law. Section 375.141 provides:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

\* \* \*

(10) Signing the name of another to an application for insurance or to any document related to an insurance transaction without authorization[.]

The transcript of the interview with Law shows that she had never seen the declarations page before and never signed her name to it.<sup>7</sup> Love admitted that he had signed Law's name on the declarations page of the MPIPF insurance without contacting Law about obtaining or canceling the MPIPF insurance.<sup>8</sup> The Director proved that Love signed the name of another without authorization.

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<sup>5</sup>Section 621.045. Statutory references, unless otherwise noted, are to the 2005 Supplement to the Revised Statutes of Missouri.

<sup>6</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

<sup>7</sup>Ex. 10 at 1.

<sup>8</sup>Ex. 11 at 4-5.

The message on the declarations page for which Love forged Law's signature was to cancel the 2005 MPIPF policy. Therefore, the document related to an insurance transaction. There is cause for discipline under § 375.141.1(10).

Count II – Insurance Unfair Trade Practice or Fraud

Section 375.141.1(7) authorizes discipline for a licensee “[h]aving admitted or been found to have committed any insurance unfair trade practice or fraud.”

The Director alleges that Love admitted to falsifying the MPIPF cancellation and the application for the 2005 National policy and that such acts constitute “the unfair trade practice of ‘False statements and entries’ as set forth in § 375.936(5)(b), RSMo 2000, in violation of § 375.934, RSMo (2000)[.]”<sup>9</sup> Further, the Director alleges that Love acted in “conscious disregard” of §§ 375.930 to 375.948 or “with such frequency to indicate a general business practice to engage in that type of conduct.”<sup>10</sup>

Section 375.936, RSMo 2000, provides:

Any of the following practices, if committed in violation of section 375.934, are hereby defined as unfair trade practices in the business of insurance:

\* \* \*

**(5) "False statements and entries:"**

\* \* \*

(b) Knowingly making any false entry of a material fact in any book, report or statement of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer[.]

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<sup>9</sup>Complaint ¶¶ 9 and 10.e. The Director does not contend that Love has “been found” to have committed an unfair trade practice.

<sup>10</sup>Complaint ¶ 10.f.

Section 375.934, RSMo 2000, provides:

It is an unfair trade practice for any insurer to commit any practice defined in section 375.936 if:

(1) It is committed in conscious disregard of sections 375.930 to 375.948 or of any rules promulgated under sections 375.930 to 375.948; or

(2) It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

The Director asserts that Love admitted the unfair trade practice or fraud alleged. The Director submitted the transcript of his investigator's interview with Love, but has not cited to the pages where Love made any admission. Our review of the transcript reveals that Love admitted that he wrote "C. Law" on the declarations page, that he had not contacted Law before he signed her name, and that he had not heard from Law or informed her that he was getting the 2005 MPIPF policy or the 2005 National policy for her.<sup>11</sup> However, Love also maintained that he obtained the 2005 MPIPF policy and 2005 National policy for Law because he wanted to make sure she was covered after her current MPIPF policy expired at the end of 2004.<sup>12</sup> Love stated that he sent in the MPIPF cancellation for the 2005 MPIPF policy after Law told him she had gotten State Farm Insurance<sup>13</sup> and that he applied the refund money to the premium for the 2005 National policy.<sup>14</sup> He maintained that he was acting in Law's best interests in trying to get her insurance coverage, although she had not explicitly authorized him to do so for 2005.

While some of Love's explanations are inconsistent with other statements in the interview and in his response to the complaint, they cannot be characterized as admissions to the elements of an unfair trade practice as defined in §§ 375.934 and 375.936(5), RSMo 2000. In

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<sup>11</sup>Ex. 11 at 4-5.

<sup>12</sup>*Id.* at 3-5, 7.

<sup>13</sup>*Id.* at 3.

<sup>14</sup>*Id.* at 5.

particular, § 375.934 requires that Love's acts be in "conscious disregard" of the law or be "a general business practice." The Director presented no evidence of Love admitting to a general business practice of making false statements or entries.

As for whether Love's statements are tantamount to admissions that he was in conscious disregard of §§ 375.930 to 375.948, RSMo 2000,<sup>15</sup> we refer to the Court of Appeals' interpretation of § 375.934(2). In *Professional Ins. Managers, Inc. v. RCA Mut. Ins. Co.*, 884 S.W.2d 332 (Mo. App., S.D. 1994), the Court of Appeals decided whether false or misleading statements in a letter that an insurer had written to insureds who were clients of a particular insurance agency violated the Unfair Insurance Practices Act. The insurer had written the agency stating that it was terminating its relationship with the agency immediately. The insurer then wrote the insureds that the agency could no longer service its policies because the insurer had terminated the agency from representing it. Despite the insurer's intent that the termination be effective immediately, § 375.033.1 required that a termination of an agency could not be effective until 90 days after a written notice. The Court decided that the statements in the letters to the insureds were deceptive or misleading because the insurer's action of terminating the agency did not have its intended effect.

In pursuing its contention that the insurer had committed unfair trade practices by making the statements in conscious disregard of §§ 375.930 to 375.948, RSMo 2000, the agency insisted that the presumption that everyone is presumed to know the law was sufficient to prove conscious disregard. The Court interpreted "conscious disregard" in § 375.394(1):<sup>16</sup>

As applied to an act, they [the words "conscious disregard"] necessarily mean that such act was intentionally done without regard to the rights of others, and in full realization of the probable

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<sup>15</sup>The Director does not allege that Love violated any rules or regulations promulgated under §§ 375.930 to 375.948.

<sup>16</sup>*Professional Ins. Managers, Inc. v. RCA Mut. Ins. Co.*, 884 S.W.2d at 337.



results thereof. "Conscious" is defined in *Webster's Third New International Dictionary* 482 (1976) as "perceiving, apprehending, or noticing with a degree of controlled thought or observation: recognizing as existent, factual, or true"; "subjectively perceived: personally felt"; "involving rational power, perception, and awareness: embodying consideration and decision." The same source, at page 655, defines "disregard" as "intentional slight or neglect."

The Court held that while the statements were deceptive or misleading, the evidence was insufficient to show "conscious disregard."

Nowhere in Love's interview does he admit to consciously disregarding §§ 375.930 to 375.948 with respect to the MPIPF cancellation or to the application for the 2005 National policy. We find no cause to discipline Love under § 375.141.1(7) because the Director presented no evidence that he admitted to or committed unfair trade practices.

### Count III – Fraud, Forgery, or Deception

#### a. 2002 Refund Check

The Director contends that Love committed fraud in 2002 by typing his own name in as the payee agent on the 2002 refund check, by endorsing the check in that capacity, and by negotiating the check without forwarding it to the payee, Homecomings Financial. Section 375.141.1(6)<sup>17</sup> authorizes discipline for any licensee who:

[p]racticed or aided or abetted in the practice of fraud . . . in connection with any insurance transaction[.]

Fraud is an intentional perversion of truth to induce another to act in reliance upon it.<sup>18</sup> Love intentionally perverted the truth by typing in his own name as the payee agent for Homecomings Financial on the 2002 refund check and then endorsing the check in that capacity.

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<sup>17</sup>The version of § 375.141 in RSMo 2000 applies to conduct in 2002 because it precedes the January 1, 2003, effective date of the current version of § 375.141 that appears in RSMo Supp. 2005. L. 2001, Senate Bill 193, § B.

<sup>18</sup>*Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.2 (Mo. App., W.D. 1997).

He knew that he was not the payee agent for Homecomings Financial. He did this to induce the bank at which he negotiated the check to treat him as the payee so he could obtain the money.

This is fraud and cause for discipline under § 375.141.1(6).

b. The MPIPF Cancellation and the  
Application for the 2005 National Policy

The Director contends that Love admitted committing fraud in the MPIPF cancellation and in the application for the 2005 National policy. Section 375.141.1(7) authorizes discipline for:

[h]aving admitted or been found to have committed any . . .  
fraud[.]

The Director alleges in paragraph 10, Count II of the complaint, incorporated by reference into Count III, that Love committed the following conduct:

a. Between December 1, 2004 and December 31, 2004, Respondent Love knowingly made entries in reports or statements of insurers, namely, National Lloyds Insurance Company and Missouri Property Insurance Placement Facility, or knowingly omitted to make true entries of material facts in reports or statements of such insurers;

b. Specifically, Respondent Love cancelled an insurance policy from Missouri Property Insurance Placement Facility and submitted an application for insurance to National Lloyds Insurance Company;

c. Such entries pertained to the business of such insurers;

d. Such entries were material and false[.]

As with the contentions under § 375.141.1(7) regarding unfair trade practices in Count II, we do not find that Love admitted to fraudulent conduct. While Love admitted to instructing MPIPF to cancel the 2005 MPIPF policy and to signing Law's name without her authorization, he contended that he had the 2005 MPIPF policy to protect her and was canceling simply because

she had obtained other coverage. He claimed that he applied the proceeds of the 2005 refund check to the premium of the 2005 National insurance policy that he also had obtained for her. Again, his statements are sometimes contradictory and could support a finding of fraud, but he never “admits” fraud. Further, the Director did not present sufficient evidence to support a finding of fraud.

Also, our review of the transcript reveals no statement from Love about what he stated in his application for the 2005 National policy. The application itself is not in evidence either.

There is no cause to discipline Love under § 375.141.1(7) because there is insufficient evidence that he admitted to or committed fraud in regard to the MPIPF cancellation or in regard to the application for 2005 National policy.

#### c. The 2005 Refund Check

In paragraph 14 of the complaint, the Director asserts that Love is subject to discipline under § 375.141.1(7) by admitting the following:

d. On or about January 11, 2005, Respondent Love forged the name Cachet Law to a check (number 118905) made payable to Ms. Law dated January 3, 2005 and issued by Missouri Property Insurance Placement Facility for three hundred sixty dollars (\$360.00);

e. On or about January 11, 2005, Respondent Love endorsed the aforementioned check and tendered it for the full amount[.]

During his February 22, 2006, interview with the Director’s investigator, Love admitted these allegations.<sup>19</sup> Love perverted the truth by signing Law’s name to endorse the 2005 refund check as if she had signed it herself. Love knew that Law had not signed it and had not authorized him

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<sup>19</sup>Ex. 11 at 5-6.

to sign it. He did this to induce the bank to negotiate the check so he could obtain the money.

This is fraud, and his admission to such is cause for discipline under § 375.141.1(7).

#### Count IV – Misappropriation of Funds

The Director contends that Love's conduct regarding the 2002 and 2005 refund checks is cause for discipline as misappropriation of funds.

##### a. The 2002 Refund Check

Section 375.141.1(5), RSMo 2000, authorizes discipline for any licensee who:

[m]isappropriated or converted to his . . . own use or illegally withheld money belonging . . . to an insured[.]

The courts have interpreted § 375.141.1(5) as follows:<sup>20</sup>

Misappropriation has been defined as “[t]he unauthorized, improper, or unlawful use of funds or other property for purpose other than that for which intended.” *Black's Law Dictionary* 998 (6th ed. 1990); *See also, Missouri Dept. of Ins. v. Wilkerson*, 848 S.W.2d 10, 12 (Mo.App.1992) (agent misappropriated funds by applying premium funds toward personal use or use for which it was unintended).

The 2002 refund check was the return of a premium overpayment to the escrow account for Hamilton and Merritt. They were the insureds under the fire insurance policy. Love caused the money to be diverted from the escrow account and, therefore, from its intended use. His conduct is cause for discipline under § 375.141.1(5), RSMo 2000.

##### b. The 2005 Refund Check

Section 375.141.1(4) authorizes discipline for:

[i]mproperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business[.]

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<sup>20</sup>*Monia v. Melahn*, 876 S.W.2d 709, 713 (Mo. App., E.D. 1994).

MPIPF issued the 2005 refund check made payable to Cachet Law because it was returning the premium to her for the canceled 2005 MPIPF policy. Love's action caused him to get the money instead of Law. Love did this in the course of receiving a premium refund for someone for whom he appeared to be acting as agent. Therefore, he misappropriated the money in the course of doing insurance business. This conduct is cause for discipline under § 375.141.1(4).

Count V – Violation of Insurance Law, Regulation, or Order

a. The 2002 and 2005 Refund Checks

The Director contends that Love's conduct in regard to the 2002 refund check is cause for discipline under § 375.141.1(1), RSMo 2000, which authorizes discipline when a licensee:

[i]n their dealings as an agent . . . knowingly violated any provisions of, or any obligation imposed by, the laws of this state[.]

The Director contends that Love's conduct in regard to the 2005 refund check is cause for discipline under § 375.141.1(2), which authorizes discipline for:

[v]iolating any insurance laws, or violating any regulation, subpoena or order of the director[.]

a. Section 375.934

The Director alleges that Love's conduct regarding the 2002 and 2005 refund checks "violated § 375.934, RSMo, and § 375.991, RSMo." We set forth the provisions of § 375.934, RSMo 2000, under Count I. Any "violation" of that section is predicated on the violation of § 375.936, RSMo 2000. However, the Director does not specify in Count V which provision in § 375.936, RSMo 2000, that Love's conduct allegedly violated. Our Regulation 1 CSR 15-3.350(2)(A)4 requires the Director's complaint to set forth "[a]ny provision of law that allows discipline for such facts." We cannot determine the statutory basis of the Director's contention

that Love's conduct violated § 375.934, RSMo 2000. Therefore, we can find no cause for discipline under § 375.141.1(1), RSMo 2000.

b. Section 375.991

Section 375.991 defines the crime of "fraudulent insurance act":

1. As used in sections 375.991 to 375.994, the term "**statement**" means any communication, notice statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of damages, bills for services, diagnosis, prescription, hospital or doctor records, x-rays, test results or other evidence of loss, injury or expense.

2. For the purposes of sections 375.991 to 375.994, a person commits a "**fraudulent insurance act**" if such person knowingly presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, purported insurer, broker, or any agent thereof, any oral or written statement including computer generated documents as part of, or in support of, an application for the issuance of, or the rating of, an insurance policy for commercial or personal insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance, which such person knows to contain materially false information concerning any fact material thereto or if such person conceals, for the purpose of misleading another, information concerning any fact material thereto.

To prove a violation of § 375.991, the Director must show that the 2002 and 2005 refund checks are "statements" within the meaning of § 375.991.1. That provision lists certain items specifically followed by "or other evidence of loss, injury or expense." The specified items do not include refund checks and neither does the quoted catch-all at the end. The Director presented no explanation, either in the complaint or at the hearing, as to how the 2002 and 2005 refund checks come within the definition of "statement." We conclude that they do not come within that definition and that therefore Love's conduct does not constitute a violation of § 375.991. Therefore, there is no cause for discipline under § 375.141.1(2).

c. Section 374.210

The Director contends that Love violated § 374.210.2, RSMo 2000, and that this is cause for discipline under § 375.141.1(2). Section 374.210.2, RSMo 2000, provides:

2. Any person who shall refuse to give such director full and truthful information, and answer in writing to any inquiry or question made in writing by the director, in regard to the business of insurance carried on by such person, or to appear and testify under oath before the director in regard to the same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or imprisonment not exceeding three months.

In paragraph 22 of the complaint, the Director alleges the following facts to show a violation of § 374.210, RSMo 2000:

c. On or about May 27, 2005, Investigator Jennifer Crum of the Missouri Department of Insurance sent a letter to Respondent Love requesting his response regarding various issues, including the check described in paragraph 14d;<sup>[21]</sup>

d. On or about June 3, 2005, Respondent Love responded to Ms. Crum's letter by indicating, among other things, that the check described in paragraph 14d was applied to Cachet Law's new policy;

e. On February 22, 2006, Respondent Love admitted that the check described in paragraph 14d was never applied to Cachet Law's new policy;

f. Respondent Love thereby violated § 374.210, RSMo (2000).

The Director submitted the transcript of his investigator's February 22, 2006, interview with Love, but gives us no citation to where in those 16 pages Love admitted that he did not apply the money to the 2005 National policy. Our review of the transcript shows that Love did not have documentation at the interview to show that he applied the funds to the National

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<sup>21</sup>This is the check dated January 3, 2005, from MPIPF to Cachet Law.

premium<sup>22</sup> and could not explain why National's billing did not reflect his payment of \$360.<sup>23</sup> He also stated that he should not have endorsed the refund check with Law's signature and should not have applied the money to National's premium.<sup>24</sup> Nevertheless, Love stuck to his statement in his letter to Crum that Law's refund was credited to her new National policy<sup>25</sup> and that he sent it to National by check.<sup>26</sup> Love never admitted that he did anything with the check proceeds other than send it to National, and the Director provided no other evidence to support his allegation.

We find no cause to discipline Love under § 375.141.1(2) because the Director failed to establish that Love violated § 374.210, RSMo 2000.

#### Count VI – Fraudulent, Coercive, or Dishonest Practices

The Director incorporates all the allegations about the 2002 and 2005 refund checks, the MPIPF cancellation, and the application for the 2005 National policy into Count VI. The Director premises his contention that there is cause for discipline on the allegation that Love intended for the insurers to rely upon the representations made during those events. The Director alleges in paragraphs 26 and 27 of the complaint:

26. The facts are as follows:

- a. Petitioner realleges the allegations contained in paragraphs 4-23;
- b. Respondent Love intended that Missouri Property Insurance Placement Facility and National Lloyds Insurance Company rely upon such representations in the conduct of business;
- c. The representations were false;

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<sup>22</sup>Ex. 11 at 6.

<sup>23</sup>*Id.* at 7.

<sup>24</sup>*Id.*

<sup>25</sup>*Id.* at 5.

<sup>26</sup>*Id.* at 6.



d. Respondent Love, by his own admission, knew that the representations were false; and

e. Respondent Love did so with the purpose to deceive or defraud.

27. As a result, sufficient grounds exist for disciplining Respondent Love's insurance license pursuant to § 375.141.1(6), RSMo (2000), or, alternatively, § 375.141.1(8), RSMo (Cumulative Supp. 2005).

Applicable to the time of the 2002 refund check, § 375.141.1(6), RSMo 2000, authorizes discipline for a licensee having:

[p]racticed or aided or abetted in the practice of fraud ... in connection with any insurance transaction[.]

Applicable to the time of the MPIPF cancellation, the application for the 2005 National policy, and the 2005 refund check, § 375.141.1(8) authorizes discipline for:

[u]sing fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

Dishonesty is a lack of integrity, a disposition to defraud or deceive.<sup>27</sup> Dishonesty includes actions that reflect adversely on trustworthiness.<sup>28</sup> The definition of "trustworthy" is "worthy of confidence" or "dependable."<sup>29</sup>

The Director has failed to produce evidence to support his contention that Love intended for the insurers to rely upon the forged endorsement signatures on the 2002 and 2005 refund checks and on the alteration to the face of the 2002 refund check. Love intended for the banks where he negotiated the checks to rely upon the alteration and endorsements. The Director has

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<sup>27</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11<sup>th</sup> ed. 2004).

<sup>28</sup>See *In re Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1992).

<sup>29</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1344 (11<sup>th</sup> ed. 2004).

failed to show cause for discipline under either § 375.141.1(6), RSMo 2000, or § 375.141.1(8) on the basis that Love intended for the insurers to rely on his representations.

As for the MPIPF cancellation, the evidence supports the contention that Love intended to deceive the MPIPF into believing that Law wanted to cancel the 2005 MPIPF policy so it would send Law's 2005 refund check to him. Love knew that was false, but made the statement anyway, with a forged signature, to deceive MPIPF into giving him the 2005 refund check. There is cause for discipline under § 375.141.1(8).

As for Love's application for the 2005 National policy for Laws, we can make no finding that there is cause for discipline because there is no evidence of what Love stated on the application.

Count VII – Incompetence,  
Untrustworthiness, or Financial Irresponsibility

The Director alleges that all the conduct alleged in the complaint demonstrates "incompetence, untrustworthiness or financial irresponsibility in this state," which the Director contends is a ground for discipline under § 375.141.1(4), RSMo 2000, or, alternatively, § 375.141.1(8).

Section 375.141.1(4), RSMo 2000, applies only to the 2002 refund check. Section 375.141.1(4), RSMo 2000, authorizes discipline for licensees who have:

[d]emonstrated lack of trustworthiness or competence[.]

As set forth earlier in this Decision, Love's conduct regarding the 2002 refund check certainly demonstrates a lack of trustworthiness.

Love's conduct regarding the 2002 refund check also shows a lack of competence. Competency, when referring to occupation, is "the actual ability of a person to perform in that

occupation.”<sup>30</sup> It also refers to the “disposition to use an otherwise sufficient professional ability.”<sup>31</sup> Love’s willingness to alter the 2002 refund check and fraudulently endorse it shows that he was unable or unwilling to perform the duties of his job—namely handle insurance premium refunds correctly. This is cause for discipline under § 375.141.1(4), RSMo 2000.

The conduct that took place after January 1, 2003, involved the MPIPF cancellation with a forged signature and the alteration and forged endorsement of the 2005 refund check and diversion of the check’s proceeds away from the payee. Section 375.141.1(8) authorizes discipline for:

[u]sing fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

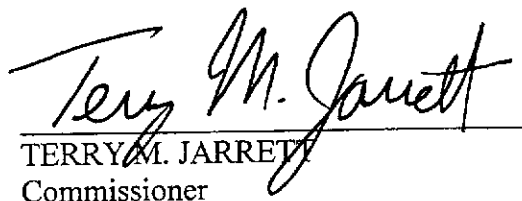
Love’s conduct in regard to the MPIPF cancellation and the 2005 refund check was fraudulent, dishonest, and demonstrated untrustworthiness in the conduct of Love’s business. This is cause for discipline under § 375.141.1(8).

There is insufficient evidence to determine whether Love’s application for the 2005 National policy is cause for discipline under § 375.141.1(8).

#### Summary

We find cause to discipline Love under § 375.141.1(4), (5), (6) and (7), RSMo 2000, and § 375.141.1(4), (8) and (10).

SO ORDERED on October 26, 2006.

  
TERRY M. JARRETT  
Commissioner

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<sup>30</sup>Section 1.020(8), RSMo 2000.

<sup>31</sup>*Johnson v. Missouri Bd. of Nursing Adm’rs*, 130 S.W.3d 619, 642 (Mo. App., W.D. 2004).